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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

OU LUANG SAELEE,

Defendant and Appellant.

F043438

(Super. Ct. No. 27683)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Merced County. Frank Dougherty, Judge.

David Y. Stanley, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Mary Jo Graves, Assistant Attorney General, and Wanda Hill Rouzan, Deputy Attorney General, for Appellant and Respondent.

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Appellant was on parole. Police searched his bedroom and found a loaded .45-caliber handgun under the mattress of his bed. He entered a no contest plea to one count

* Before Ardaiz, P.J., Harris, J. and Levy, J.

of possession of a firearm by a person previously adjudged a ward of the Juvenile Court within the meaning of Welfare and Institutions Code section 602 (Pen. Code, § 12021, subd. (e); count 1), and to one count of possession of ammunition by a prohibited person (Pen. Code, § 12316, subd. (b)(1); count 2). The ammunition appellant possessed was the ammunition in the loaded gun. Appellant was sentenced to a total term of three years and eight months. This consisted of three years on count 1 and a consecutive eight months on count 2.

Appellant contends that Penal Code section 654 bars imposition of his consecutive eight-month sentence on count 2. As we shall explain, we agree.

PENAL CODE SECTION 654 BARS MULTIPLE PUNISHMENT FOR THESE OFFENSES

In *People v. Lopez* (2004) 119 Cal.App.4th 132, a defendant was convicted of these same two crimes. There, as here, the ammunition the defendant possessed was loaded into the firearm he possessed. The court stated:

“In resolving section 654 issues, our California Supreme Court has recently stated that the appellate courts should not ‘parse[] the objectives too finely.’ (*People v. Britt* [(2004)] 32 Cal.4th [944,] 953.) To allow multiple punishment for possessing ammunition in a firearm would, in our judgment, parse the objectives too finely. While there may be instances when multiple punishment is lawful for possession of a firearm and ammunition, the instant case is not one of them. Where, as here, all of the ammunition is loaded into the firearm, an ‘indivisible course of conduct’ is present and section 654 precludes multiple punishment.” (*People v. Lopez, supra*, 119 Cal.App.4th at p. 138.)

“When a defendant suffers multiple convictions, sentencing for some of which is precluded by operation of section 654, an acceptable procedure is to sentence defendant for each count and stay execution of sentence on certain of the convictions to which section 654 is applicable. Such stay is to be effective pending the successful service of sentence for the more serious conviction, at which time the stay is to become permanent.” (*People v. Miller* (1977) 18 Cal.3d 873, 886 [disapproved on another ground in *People v.*

Oates (2004) 32 Cal.4th 1048, 1067-1068, fn. 8]; in accord, see also *People v. Deloza* (1998) 18 Cal.4th 585, 592; and *People v. Snow* (2003) 105 Cal.App.4th 271, 283.)

“Where multiple punishment has been improperly imposed, ‘... the proper procedure is for the reviewing court to modify the sentence to stay imposition of the lesser term.”

(*People v. Butler* (1996) 43 Cal.App.4th 1224, 1248; *People v. Spirlin* (2000) 81 Cal.App.4th 119, 131.)

DISPOSITION

Appellant’s sentence is modified so that execution of the sentence imposed on count 2 is stayed pending the finality of the judgment and service of the sentence on count 1, such stay to become permanent upon completion of the sentence on count 1. The superior court is ordered to prepare an amended abstract of judgment to reflect this modification, and to send the amended abstract of judgment to the Department of Corrections. (See *People v. Lopez, supra*, 119 Cal.App.4th at p. 139; *People v. Spirlin, supra*, 81 Cal.App.4th at p. 131; *People v. Butler, supra*, 43 Cal.App.4th at pp. 1248-1249. As so modified, the judgment is affirmed.